

WRIT PETITION NO. 352 OF 2003

1. Vishwanath M. Bakal,
aged 49 years, Pigmy
Agent, Vijaya Bank,
Margao Branch,
Margao-Goa.

2. Vittal Shetty,
aged 45 years, Pigmy
Agent, Vijaya Bank,
Margao Branch,
Margao-Goa

... Petitioners.

versus

1. Vijaya Bank,
a nationalised Bank
represented by its
General Manager, having
its Branch Office at
Margao, near Municipality,
Margao-Goa.

2. Vijaya Bank,
a Government of India
undertaking, having its
Head Office at 41/2
M. G. Road, Bangalore,
represented by its
Chairman & Managing
Director.

... Respondents.

Mr. V. A. Lawande, Advocate for the Petitioners.

Mr. M. S. Joshi, Advocate for the Respondents.

CORAM: F. I. REBELLO &
P. V. HARDAS, JJ.

DATED: 13TH AUGUST, 2003.

ORAL ORDER(PER F.I.REBELLO, J.)

The Petitioners are working as Pigmy Agents with Respondent No.1. It is the contention of the Petitioners that they are workmen of the Respondent Bank and considering the Judgment of the Apex Court, they are not entitled for being absorbed and regularised. It is the case of the Petitioners that during the year 1980, the Respondent Bank increased the rate of commission from 3% to 3 1/2% and as such, they were paid commission at that rate from the year 1980 onwards.

In 1980, All India Deposit Collectors Federation raised an industrial dispute against 11 Banks functioning in Andhra Pradesh. The demand was that the Deposit Collector should be absorbed as regular employees of the Bank. A reference came to be made which read as under:-

Whether the demands of the commission agents or as the case may be of the deposit collectors employed in the bank as listed in the annexure that they are entitled to pay scales, allowances and other service conditions available to regular clerical employees of those

banks is justified? If not, to what relief are the workmen concerned entitled and from which date?

2. Pursuant to that, various claims were filed before the Industrial Tribunal. An Award came to be passed on 22nd December, 1988. The Award provided that all those Deposit Collectors and Agents who are below the age of 45 years on 3rd October, 1980 shall be considered for regular absorption for the post of Clerks and Cashiers if they are matriculates and above including qualified graduates and post-graduates. Such employees are to be taken to Bank service as regular employees if they pass the qualifying examination conducted by the Banks. Those who are absorbed should be treated on par with regular clerical employees of the Bank. Those who are qualified with 8th class and below matriculation were to be considered for absorption as sub staff by conducting qualifying examination. In respect of those Deposit Collectors who were aged 45 years and those who were unwilling to be absorbed in regular Banks service an Award came to be made out as set out in terms of the Award.

3. The All India Banks Association agreed by the Award challenged the same before a Division Bench of the Andhra Pradesh High Court. A Division Bench of the Andhra Pradesh High Court held that the Pigmy Collectors are workmen. However, they found that none

can be absorbed as regular employees and all of them have to be treated as only one category and thereafter, made the following Order:-

"We would hence uphold and apply the decision of the Tribunal of payment of full back-wages and incentive commission as well as conveyance allowance and gratuity to the deposit collectors as workmen. The award stands modified accordingly".

4. Against this Order, an Appeal came to be preferred before the Apex Court in the case of **Indian Banks Association v. Workmen of Syndicate Bank and others** (AIR 2001 SC 946). The Apex Court upheld the contention that Deposit Collectors were workmen. The Appeals were dismissed. In other words, the Judgment of the Division Bench of the Andhra Pradesh High Court holds the field.

5. By the present Petition, the reliefs prayed for by the Petitioners are as under:-

- (a) Issue a writ of certiorari or any other writ in the nature of certiorari or any other appropriate writ, order of direction as the case may be, quashing the impugned circular dated 13-6-2001 at Exhibit 'A' as being arbitrary and illegal with all consequential benefits.

- (b) Declare by issue of appropriate writ in the nature of mandamus or any other appropriate writ, order or direction as the case may be, directing the respondent to continue to pay commission at the rate of 3 1/2% (three and half percent) on the total amount collected by the Petitioners every month and not to reduce the rate of commission by applying the rate fixed in the Award of the Industrial Tribunal, Andhra Pradesh as is sought to be done".

6. On behalf of the Petitioners, learned Counsel contends that the issue of the commission earlier prayed was not in issue in the reference and apart from that, they were not parties and consequently reliefs as prayed for granted.

7. The issue whether the Petitioners were parties or not is immaterial. The issue was industry-wise reference. The issue involved was in respect of Pigmy Collectors who are similarly situated like the Petitioners herein. By virtue of the reference, new terms and conditions have been laid down as conditions of service of the Pigmy Collectors. They have been considered to be workmen for that limited purpose. The Pigmy Collectors did not challenge the said Award. On the contrary, the Indian Banks Association had challenged the Award before the Andhra Pradesh High Court. The challenge of the Indian Bank

Association was upheld, to the extent that the persons like the Petitioners could not be regularly absorbed in Bank service. However, it was held that they would be entitled to the other benefits in terms of the Award. Several Appeals were both filed by the Indian Banks Association and the All India Deposit Collectors before the Apex Court. The Apex Court rejected all the Appeals. In other words, the Award as modified by the Andhra Pradesh High Court holds the field.

8. The reference was at the instance of the All India Deposit Collectors Federation. It is immaterial, therefore, whether that the Petitioners were members as it was industry-wise reference. Once terms and conditions have been set out it is those new terms and conditions which will apply giving a go-bye to the old service conditions.

We find no merit in this Petition and the same is accordingly rejected.

F. I. REBELLO, J.

P. V. HARDAS, J.

RD.